

Decision 05-09-032 September 22, 2005

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of William M. Gavin (Affordable Home & Apartment Movers) to Operate as Household Goods Carrier in State of California.

Application 04-10-036
(Filed October 29, 2004)

**OPINION GRANTING CONDITIONAL
HOUSEHOLD GOODS CARRIER PERMIT**

Summary

In this decision, we approve with conditions the application of William M. Gavin dba Affordable Home & Apartment Movers for a household goods carrier permit. We adopt the Settlement Agreement between Gavin and the Consumer Protection and Safety Division (CPSD). We order the Transportation Enforcement Branch's Licensing Section to issue Gavin a permit to operate as a household goods carrier. As provided in the Settlement, Gavin shall remain on probation for two years following the effective date of this decision. Should Gavin violate the terms of the Settlement, Gavin's permit shall be suspended and his operating authority revoked.

Background

Gavin's application seeks authority to operate a new household goods company, Affordable Home & Apartment Movers. His prior company, Affordable Apartment Movers (AAM), ceased operating in California during the year prior to the filing of this application. Gavin states he and Affordable Home & Apartment Movers will comply with all applicable provisions of the Public Utilities Code and Commission regulations.

A. Compliance with Decision 02-08-052

On November 29, 2004, CPSD filed a protest requesting that we reject and deny this application until Gavin complies with Decision (D.) 02-08-052, as modified. In D.02-08-052, resulting from our investigation into the operations of AAM, we ordered AAM to make reparations to customers and to pay a fine of \$26,000. We further ordered that all but \$6,500 of the fine would be suspended if AAM submitted a statement to CPSD that it had made the reparations. AAM failed to submit the statement to CPSD and failed to pay the fine. In April 2003, CPSD petitioned to modify D.02-08-052 to impose further sanctions for failure to comply with that decision. AAM failed to respond to the petition. D.03-08-011 granted CPSD's petition, reinstated the fine of \$26,000, permanently revoked AAM's operating authority with prejudice, and decided that '[a]ny request for new operating authority by AAM or its principals must be made by the formal application process and must demonstrate compliance with D.02-08-052, as modified."

B. Prehearing Conference

A prehearing conference (PHC) was held on January 6, 2005 to determine the scope of the proceeding and need for hearings. At the PHC, the parties requested the opportunity to continue discussions to resolve compliance issues and address Affordable Home & Apartment Movers' fitness to operate as a household goods carrier. The parties agreed there were no disputed facts and no need for hearings.

At the PHC, the administrative law judge (ALJ) ordered the parties to file a plan for compliance with D.02-08-052, as modified, on or before March 11, 2005. The scoping memo confirmed this directive, set the schedule for the proceeding, confirmed the categorization of this proceeding as ratesetting,

and prohibited ex parte communications because we continued to examine Gavin's compliance with Commission rules and regulations in this application proceeding.

C. Settlement Agreement

On March 18, 2005, CPSD filed its Compliance Report and Motion for Adoption of Settlement.¹ The Settlement, entered into by CPSD and Gavin and attached to this decision, includes the following provisions:

- Gavin agrees to pay the \$26,000 fine ordered by D.02-08-052 in one installment of \$2,000 and 18 monthly installments of \$1,000 each thereafter, until he has paid a total of \$20,000.
- CPSD recommends the remaining \$6,000 of the fine be suspended.
- CPSD states Gavin has paid the full \$660 balance of a small claims court judgment, as required by D.02-08-052.
- Gavin agrees to a two-year probation.
- Gavin shall file semi-annual written reports with CPSD relating to the current financial status of Gavin's business (Balance Sheet, Profit and Loss Statement, etc.), insurance coverage in effect, and consumer complaints received by Gavin (subject of complaint, information on complainant, disposition of complaint, copies of all correspondence, and a copy of any court judgment and proof of any required payment).
- Gavin agrees to comply with all terms of the Settlement and with Maximum Rate Tariff No. 4. Failure to comply with Settlement terms will result in automatic suspension with subsequent revocation of the conditional household goods carrier permit. The

¹ CPSD received a one-week extension to file the compliance report.

remaining balance of the fine will be immediately due and payable, and

- If Gavin fails to comply with the Settlement, Commission rules or regulations or any Commission judicial decision, CPSD may petition to reopen this proceeding or initiate another proceeding to impose fines and penalties and suspension or to revoke Gavin's operating authorities pursuant to Pub. Util. Code § 5285(b).

D. Fitness to Operate

At the request of the ALJ, CPSD submitted its conditions on Gavin's fitness to operate on July 19, 2005. Gavin is not engaged in criminal activity, is financially fit, and has complied with all insurance requirements. However, CPSD believes Gavin is operating or has operated as a household goods carrier prior to obtaining his license. There have been three complaints against Gavin since the parties signed the Settlement. Gavin has told CPSD that he is an employee of Affordable Home & Apartment Moving Specialists, which is owned by Cynthia Wigton. Gavin and Wigton offered to settle the three complaints in a manner that is satisfactory to CPSD. CPSD continues to recommend that Gavin receive operating authority.

II. We Adopt CPSD's and Gavin's Settlement Agreement

CPSD and Gavin submitted an uncontested Settlement to resolve compliance with our decision in the enforcement proceeding, D.02-08-052, as modified. We examine the Settlement to determine if it is consistent with law and in the public interest as required under Rule 51.1(e).

The Settlement resolves Gavin's failure to comply with D.02-08-052, as modified. To ensure compliance the Settlement requires Gavin to pay the ordered fine and make restitution to consumers. Gavin is not required to pay the

fine until the Settlement is approved. CPSD has monitored Gavin's restitution payments and finds he is in compliance with that portion of the Settlement. The Settlement further ensures compliance with D.02-08-052, as modified, by providing that Gavin's operating authority automatically will be suspended if Gavin fails to comply with the terms of the Settlement and that his conditional household goods carrier permit will be revoked a week after suspension. The Settlement protects the public by imposing a two-year probation with strict reporting requirements. These Settlement terms should both protect consumers and ensure compliance with our decisions, rules, and regulations. Thus, the Settlement is consistent with law and in the public interest.

We next examine whether the Settlement is reasonable in light of the whole record. The Settlement recommends a two-year conditional permit, but Gavin's application did not provide sufficient information on fitness. Therefore, CPSD has presented the results of its fitness review.

Gavin has submitted to background checks by federal and state authorities and has passed those background checks. Gavin has provided a balance sheet, a working capital sheet, and a short-term projected profit and loss statement. These financial statements demonstrate assets significantly higher than liabilities. Gavin has both the ability to operate and to pay the fines required by the Settlement. Gavin also has passed the required household goods carrier examination. Finally, Gavin has produced documents to show compliance with our insurance coverage requirements, including public liability, property damage, and cargo insurance and a quote for Workers' Compensation insurance. Compliance with our financial and insurance coverage requirements and satisfactorily completing the background check demonstrate Gavin generally has met our fitness requirements.

We next consider Gavin's actions since signing the Settlement in the context of his fitness to operate. CPSD believes Gavin is currently operating, or has recently operated, as an unlicensed household goods carrier. The Ventura, Oxnard, and Camarillo Yellow Pages list "Affordable Home & Apartment Movers," W.M. Gavin, CAL T #187559. There are three shipper complaints (all for moves occurring after the Settlement was signed) directed against Gavin and Affordable Home & Apartment Movers. Gavin has explained to CPSD that he is an employee of Mrs. Wigton, the owner of Affordable Home & Apartment Moving Specialists, who apparently is Gavin's ex-wife. CPSD has confirmed that Affordable Apartment Moving Specialists has no authority to operate as a household goods carrier in California.

Gavin appears to be operating without our authority. The carrier for which Gavin alleges he is an employee is not licensed. It appears Gavin is in business as an unlicensed household goods carrier and has unlawfully advertised his business as licensed. It also appears Gavin did not meet our insurance requirements when the first shipper complaint was filed and that Gavin cannot satisfy the Workers' Compensation insurance requirement until he is licensed. Despite CPSD's conclusion that Gavin is operating unlawfully, CPSD continues to recommend that Gavin receive operating authority. One reason for CPSD's recommendation is Gavin's and Wigton's willingness to resolve the outstanding complaints.

Gavin's apparent continuing failure to comply with our rules and regulations raises a doubt as to whether he is fit to operate as a household goods carrier in California. CPSD believes that doubt should be resolved in favor of Gavin. Several aspects of the Settlement weigh in favor of granting operating authority—the payment of \$20,000 in fines, the two-year probation, the regular

reporting requirements, and the automatic suspension and revocation provisions. These provisions should ensure that Gavin is fit to operate as a household goods carrier in California. Thus, we determine that Gavin has met our fitness requirements for a conditional household goods carrier permit. Approval of the Settlement is appropriate in light of the record in this proceeding. We will order the Transportation Enforcement Branch's Licensing Section to issue Gavin a two-year household goods carrier permit.

III. Assignment of Proceeding

Geoffrey F. Brown is the Assigned Commissioner, and Janice Grau is the assigned ALJ in this proceeding.

IV. Comments on Draft Decision

Pub. Util. Code § 311(g)(1) provides that this decision must be served on all parties and be subject to at least 30 days public review and comment prior to a vote of the Commission. Section 311(g)(2) provides that this 30-day period may be reduced or waived upon the stipulation of all parties in the proceeding.

All parties in the proceeding have stipulated to reduce the 30-day waiting period required by Pub. Util. Code § 311(g)(1) to 27 days. Accordingly, this matter will be placed on the first Commission agenda 27 days following the mailing of this draft decision. By stipulation of all parties, comments shall be filed no later than 17 days following the mailing of this draft decision, and reply comments shall be filed no later than 22 days following the mailing of this draft decision. No comments were filed. At the ALJ's direction, CPSD filed its Report and Updated Position on September 6, 2005.

Findings of Fact

1. D.02-08-052 ordered AAM to make reparations to customers and to pay a fine of \$26,000. D.03-08-011 revoked AAM's operating authority with prejudice

and decided any request for new operating authority by AAM or its principals must be made by the formal application process and demonstrate compliance with D.02-08-052, as modified.

2. On March 18, 2005 CPSD submitted a motion for adoption of its Settlement Agreement with William M. Gavin dba Affordable Home & Apartment Movers.

3. The Settlement Agreement provides for a two-year probation.

4. The Settlement Agreement provides that Gavin's failure to comply with each and all terms will result in automatic suspension with revocation in one week of Gavin's conditional household goods carrier permit.

5. There is no opposition to the Settlement Agreement.

6. CPSD submitted a report on Gavin's fitness to operate. Gavin is not engaged in criminal activity, is financially fit, and has complied with all insurance requirements.

7. Three shipper complaints have been filed against Gavin since the parties signed the Settlement Agreement. Gavin has agreed to settle those complaints.

Conclusions of Law

1. The Settlement Agreement is an "uncontested settlement" as defined in Rule 51(f).

2. The Settlement Agreement is reasonable in light of the whole record, consistent with law, and in the public interest.

3. The Settlement Agreement should be adopted.

4. Granting Gavin a two-year conditional permit as a household goods carrier is reasonable.

5. In the interest of resolving Gavin's status as a household goods carrier, this decision should be made effective immediately.

O R D E R

IT IS ORDERED that:

1. The Settlement Agreement (attached to this order) between the Consumer Protection and Safety Division (CPSD) and William M. Gavin, dba Affordable Home & Apartment Movers, is adopted.

2. The Transportation Enforcement Branch's Licensing Section shall issue Gavin a permit for a term of two years as a household goods carrier, as provided for in the Settlement Agreement.

3. Application 04-10-036 is closed.

This order is effective today.

Dated September 22, 2005, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
SUSAN P. KENNEDY
DIAN M. GRUENEICH
JOHN A. BOHN
Commissioners

[ATTACH A TOJLG A0410036](#)